

In the Matter of Merchant Mariner's Document No. DZ-14289-D3 and all  
Documents  
Issued to: WILLIAM E. LEAKE

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1138

WILLIAM E. LEAKE

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 2 December 1958, an Examiner of the United States Coast Guard at Long Beach, California suspended Appellant's seaman documents upon finding him guilty of misconduct. The three specifications found proved allege that while serving as an oiler and wiper on the United States SS MORMACMAR under authority of the document above described, Appellant failed to perform his duties and was absent from the ship without permission on several occasions in September and October 1954.

At the hearing on 28 November 1955, Appellant entered a plea of not guilty to the charge and each specification. The Investigating Officer introduced in evidence certified copies of excerpts from the Shipping Articles and the Official Logbook of the ship for the voyage in question. Appellant did not submit any evidence in his defense. On 28 November 1955, the Examiner adjourned the hearing to await the preparation of his decision.

For reasons unexplained in the record, the Examiner did not render his decision until 2 December 1958. He concluded that the charge and three specifications had been proved by the evidence. The Examiner entered an order suspending all documents, issued to Appellant, for a period of four months on twelve months' probation. The decision was served on Appellant on 25 February 1959.

OPINION

This appeal is based solely on the fact that the Examiner did not render his decision for a period of more than three years after the hearing procedure was otherwise completed. For this reason, it is contended that Appellant should not be adversely affected at this late date.

I agree with Appellant's position that there is no reason why the Examiner should not have rendered his decision expeditiously in this simple case. The inordinate delay from 28 November 1955 to 2 December 1958 is completely unexplained in the record. The regulations require examiners to render their decisions "as soon as

possible" and "without undue delay". 46 CFR 4.05-3(a), 137.07-5(a). Hence, this decision should have been rendered within a few days after the hearing was adjourned on 28 November 1955 rather than three years later.

Appellant has been prejudiced with respect to his right, under the regulations, to have this matter taken care of much sooner than it was. Consequently, although the logbook entries in evidence are sufficient to support the allegations, the charge and specifications will be dismissed. It would be unfair to Appellant to allow this period of probation to commence running from 25 February 1959, the date when he received the decision, which was more than three years later than it should have been served.

A long-delayed decision such as this tends to defeat the remedial purpose of these proceedings to act as a deterrent in the immediate future after an offense has been committed. Nevertheless, the action taken in this case is not to be considered as establishing a precedent.

#### ORDER

The charge and specifications are dismissed. The order of the Examiner dated at Long Beach, California, on 2 December 1958, is VACATED.

A. C. Richmond  
Vice Admiral, United States Coast Guard  
Commandant

Dated at Washington, D. C., this 10th day of February 1960.